IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.293 OF 2005

Shri Naushad Ibrahim Shaikh. ..Applicants.

V/s.

Shri Vitha Hari Nirajkar & Anr. ..Respondents.

Mr.B.R.Patil for applicants.

Mr.Vijay Killedar, for respondent No.1.

Ms.R.M.Gadhavi, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 24, 2005.

P.C. :

1. Heard counsel for the petitioner.

2. Two contentions have been raised before me. The first argument is that the complaint instituted by the respondent was premature. This submission is made on the basis that notice was issued on 3rd November, 1997, which was stated to be received by the petitioner on 4th November, 1997, whereas the complaint was filed on November 17, 1997 within the statutory period of 15 days available to the accused to pay the amount. This submission however, overlooks that the court took cognizance of the complaint on November 24, 1997 only after the

statutory period of 15 days was over. If it is so, no fault can be found as it is well settled that even if the complaint is filed prematurely, Court instead of dismissing the same can postpone the date of taking cognizance after statutory period. Hence, there is no substance in the first argument canvassed before me.

3. Second argument canvassed before me is that the notice has not been duly served on the petitioner accused and therefore, the entire proceedings are vitiated. Even this submission does not commend to me. The two courts below have considered this aspect. On appreciation of evidence on record, it is found as of fact that the notice was duly served on the accused. There is no reason to doubt the concurrent finding of fact reached by the two courts below in this behalf.

4. To get over this position, counsel for the applicants relied on evidence of P.W.1 to contend that he has accepted the fact that the signature appearing on the cheque and the acknowledgment of the notice is not the same. This submission is misreading of the evidence of P.W.1. On fair reading of the evidence of P.W.1, I am in agreement with the

conclusion reached by two courts below that the notice was duly served on the accused/petitioner.

5. As no other contention is raised, petition is dismissed.